

AREA PLAN COMMISSION OF TIPPECANOE COUNTY

**ORDINANCE COMMITTEE
MINUTES OF PUBLIC MEETING**

DATE.....January 2, 2003
TIME.....5:00 P.M.
PLACE.....COUNTY OFFICE
BLDG.
20 N. 3RD STREET
LAFAYETTE IN 47901

MEMBERS PRESENT

Jan Mills
Karl Rutherford
KD Benson
David R. Williams
Mark Hermodson

STAFF PRESENT

James Hawley
Sallie Fahey
Bernard Gulker
Kathy Lind
Joanna Grama, Atty.

Jan Mills called the meeting to order.

Mark Hermodson moved to approve the minutes from December 4 and 10, 2002.
Karl Rutherford seconded and the motion was carried by voice vote.

I. PRIMARY USES IN AGRICULTURAL ZONES

Jan Mills recapped previous discussions on Primary Uses in Ag Zones. She stated that some uses would be permitted only by special exception, they must occupy a minimum of 5 acres, they have a limit of 5,000 square feet of outside storage and the storage area must be screened and separated from residential uses. She said that a decision was not reached on the 15-day appeal limit and would need to be discussed at this meeting.

Bernard Gulker reviewed the memo presented in the packet regarding the changes to the UZO in portions 3-2-4 Construction; 4-4 Setbacks and 4-9 Bufferyards and other Buffering Requirements, which Jan Mills mentioned above. He pointed out that new subsections 4-4-11 and 4-9-9 would have to be added as part of these changes.

Karl Rutherford questioned whether there was a discussion and/or decision on the 5,000 square feet limit of outdoor storage.

Bernard Gulker stated that his notes indicated there was a discussion, but not necessarily a consensus on that topic.

James Hawley stated that it was indoor and not outdoor that was discussed, which would comply with the rest of the ordinance.

Karl Rutherford stated that he did remember discussing the topic as 5,000 square feet, indoors. He pointed out that requiring a limit of 5,000 square feet of storage is proportionally minuscule to the requirement of 5 acres. He suggested lessening these requirements or alleviating the setback or fencing restrictions. He mentioned that the 200-foot setback is a good idea and that a limit of 10,000 square feet of outside storage would also be acceptable.

James Hawley stated that it was not the intent to restrict the amount of maximum area outside.

James Hawley said that the building size of a maximum of 5,000 square feet was accurate and fit with other uses. He asked if the Committee wanted to establish a maximum of outside storage.

Karl Rutherford stated that the 200-foot setback and fencing requirements were limiting enough, but he would not be opposed to having a requirement on outside storage.

David Williams stated that he liked the 5-acre requirement and agreed that the outdoor maximum size storage area should be taken out and leave only the fencing in.

Karl Rutherford asked if requirement #3 could be entirely eliminated.

Bernard Gulker stated that footnote #8 would have to be revised to say, "permitted by special exception in A, AA and AW zones on 5 acres or more."

James Hawley said that chapter 4 would state "the area for materials and equipment associated with primary uses Sic 15 and 17 shall be totally and permanently enclosed by opaque fencing at least 6 feet high", and eliminate the portion referring to the maximum outside storage.

Karl Rutherford mentioned that the term "opaque fencing" does not necessarily mean a literal fence.

Bernard Gulker stated that this should remain in the bufferyard section and refer to it as "opaque fencing and/or landscaping and/or berming".

Karl Rutherford, Jan Mills and Mark Hermodson agreed with that language.

KD Benson asked if a chain-link fence with slats would be considered opaque.

James Hawley stated that was fairly opaque.

Jan Mills asked Bernard Gulker to make those changes.

KD Benson asked what would happen to the 200-foot setback requirement if an adjoining lot were rezoned.

James Hawley stated it would become non-complying by setback.

Bernard Gulker stated that by adding the condition as 4-4-11, makes the 200-foot variable.

Mark Hermodson moved to put the amended UZO changes for 3-2-4; 4-4-11 and 4-9-9 on the February 19, 2003 regular Area Plan Commission meeting agenda.

Joseph T. Bumbleburg, PO Box 1535, Lafayette, IN, asked for clarification on what Mark Hermodson was moving.

Mark Hermodson stated that the 500 square foot outdoor storage has been eliminated. He said that the 5-acre minimum, 200-foot setback from residential uses and language pertaining to fencing and/or landscaping would remain as part of the amendments.

Joseph T. Bumbleburg stated that these amendments were improvements from previous requirements and ordinances. He pointed out, in the case of Mr. Curtis, who is surrounded by people, a 200-foot set back would be needed on all sides. He explained that none of this land would meet the setback requirement in that case. He mentioned that a 200-foot setback is not a magic fix. He stated that this restriction might make the matter impossible for some people. He pointed out that this might increase the number of BZA variance applications. He asked if the setback from residential use should be from the residential structure or the residential property line. He suggested revisiting the possibility of the setback starting at the road instead. He pointed out that adjoining land is a farm with similar equipment and no setback restrictions. He stated that causes an equal protection issue. He agreed with the requirement of an opaque screening. He offered his opinion that this proposal was closer than any others, but not to a point that the ordinance should be amended. He stated that the 15-day appeal process could not be amended because it is in the statute. He revisited his suggestion from last month's meeting that the administrative officer send a letter of invitation, before the enforcement process begins.

Karl Rutherford asked Joseph T. Bumbleburg if his suggestion was not to require a 200-foot setback from residential areas.

Joseph T. Bumbleburg explained that 200 feet may be excessive and may cause criticism of inconsistency.

Mark Hermodson stated that a distinction between farming and industrial use must be maintained.

Joseph T. Bumbleburg stated that this was one point that is indefensible. He reiterated his suggestion that the setback be from the road. He pointed out that the proposal was for the set back to be 200 feet from any residential use, and a lot that housed any kind of residence would force the 200 feet of setback. He explained that was why he asked if the 200 feet started at the lot line or at the residential structure.

Sallie Fahey stated that a farm was not a residential use, even if the farmer's home is located there.

KD Benson asked if that meant it had to be from a residential zone.

Joseph T. Bumbleburg asked why the language of the proposal read "use or zone". He suggested striking out the word "use" and leaving in "zone".

Sallie Fahey stated that there was a 2-acre parcelization next door that is zoned A.

Karl Rutherford asked if that meant that the 200 feet would not be in effect.

Sallie Fahey stated that in that case it should be in effect. She said that if a 2-acre parcelization is used for a single family home next door, then an industrial use should be subject to the 200-foot setback.

Joseph T. Bumbleburg stated that it is more likely to have a farm than a parcelization and a farm is indefensible.

KD Benson asked how use was determined.

Sallie Fahey stated that Mark Hermodson's comment was correct that everywhere in the country there are distinctions made between industrial and agricultural uses. She said that it is paramount that this ordinance continues that distinction.

Mark Hermodson stated that agricultural must be protected. He said that if there is no distinction made then the use continues to grow until there is a conflict. He pointed out that Al Levy's example is more likely, that a residential use would be on one side and not all three.

Sallie Fahey stated that a farm, including its house is an agricultural use. If the farmer has parcelized or subdivided the house, then it is considered a residential use.

KD Benson asked if there was a minimum acreage.

Sallie Fahey replied no.

KD Benson asked if a 5-acre piece of ground with a parceled house on it, yet some of that was farmed, would it still be a farm.

James Hawley stated that the definition of farm does not include a residence.

Joseph T. Bumbleburg said he was asking what the definition of residential use is. He pointed out that customarily when something in the ordinance is boldfaced, that means it is defined elsewhere.

Bernard Gulker said that residential should not be in boldface, just use.

Joseph T. Bumbleburg mentioned Al Levy's suggestion of creating the buffer only against the residential use. He said that might be an interesting solution.

Bernard Gulker explained the typographical error in the memo. He said that residential was in bold because residential zone was defined. He clarified that "residential zone" should be in bold and then "use" in bold.

James Hawley stated that it is not out of line to be 200 feet from the road, provided it is out of sight. He said that they might want to consider a lesser separation along property lines that would give adequate room within the 5-acre tract.

Karl Rutherford agreed, especially since there is going to be a fence.

Mark Hermodson reviewed the suggestion, stating a 200-foot setback from the road, and a 100-foot setback, with buffer, from the residential use and/or zone.

Karl Rutherford asked for clarification.

Sallie Fahey stated that using the example on the board, the way it is worded now, if it was all one lot and not farmed and the only use of the lot was a single-family home then all three sides would have to be buffered.

James Hawley stated that they have buffered between industrial and Ag uses for residences on the Ag side, for a particular distance.

Sallie Fahey stated that was under the old ordinance, not the current one.

Karl Rutherford stated there was a case on the south side that they had buffered a property in that manner.

Mark Hermodson agreed that he remembered cases where the buffer only went as far as the particular uses.

Sallie Fahey asked if that was done as a variance.

James Hawley stated that it was still in the ordinance. He quoted from chapter 4, footnote 1, page 178 of the new ordinance.

Jan Mills asked the Committee if they wanted to amend this section to something similar to page 178.

Mark Hermodson suggested using the same standards as what is already there.

Sallie Fahey explained that the requirements in this footnote are different than what they were looking for. She clarified that if the house on the neighboring property were located within 150 feet of the industrial line, then the bufferyard would have to be applied.

James Hawley reiterated Sallie Fahey's explanation.

David Williams suggested adding both, but then whatever is behind the fence would have to be buffered anyway. He said that if there is a residential use then the buffer would definitely be required from the residential structure, but not around the property.

James Hawley suggested leaving in the 200-foot setback from the road.

Bernard Gulker stated he did not think page 178 had anything to do with what the discussion was supposed to be about. He said this footnote is referencing a situation where an undeveloped piece of land is being developed next to an existing use. He said it should have it's own section. He suggested adding it to the new section 4-4-11 as a front setback of 200' and rear and side setbacks of 100'.

KD Benson asked if the special exception process can over-rule requirements of what needs to be buffered or fenced.

Sallie Fahey stated that it could be done but they would have to apply for a variance, not a special exception.

James Hawley stated that the question would not be what it looks like, but is there a hardship. He said that it is better to have a standard established in the ordinance that the ABZA is able to measure against.

Karl Rutherford asked if they could require a 100-foot buffer on the side where the house is located.

Sallie Fahey stated one is a setback and one is a buffer.

Karl Rutherford asked how it should be worded.

Sallie Fahey reiterated her earlier example that an adjoining farm that is one property, does not apply. She said regardless of the size of the lot, if it is a single-family use, it should be buffered from an industrial use.

Bernard Gulker pointed out that only the area that is used to store the outdoor equipment needs a fence. He stated the language does not refer to the entire property being fenced.

Mark Hermodson stated that was not a point of contention. He said the point is the setback and where that can go around the property lines.

Bernard Gulker stated that the setback is from the property line but not the screening.

Karl Rutherford asked if everyone is in agreement on the 200-foot setback from the road.

Several members responded affirmatively.

Joseph Bumbleburg asked if there was going to be a buffer zone under the bufferyard section, which specifies a certain distance, why is a setback needed.

Karl Rutherford stated that he could agree with that if the buffer was with trees and bushes but not buffered with a chain link fence with slats.

Joseph T. Bumbleburg asked if the bufferyard includes the chain link fence that Karl Rutherford described.

Bernard Gulker said that with bufferyards a certain number of trees and shrubs are required within a certain width. He said that the current discussion is about an enclosure. He pointed out that planting a bufferyard would not be effective for two decades.

Karl Rutherford asked if it would make sense to drop the opaque fence language and install a bufferyard.

Jan Mills reiterated Bernie's statement that it would take two decades to grow in.

Sallie Fahey stated that even the most dense bufferyard requirement, is still very sparse, proportionally.

Bernard Gulker pointed out that putting up an opaque fence is considerably less expensive than surrounding it with landscape materials that are opaque.

James Hawley agreed and suggested making the side setbacks 100 feet.

Mark Hermodson pointed out that 100 feet on the sides and 200 in front, still leaves about an acre left over.

Sallie Fahey stated that these setbacks would only apply to outdoor storage. She pointed out that there could still be pole barns and similar structures within the setbacks.

Mark Hermodson said that setbacks for buildings were only 25 feet.

Mark Hermodson moved that the amendment read a 200-foot setback from the road and 100 foot setbacks from the remaining residential use sides. Karl Rutherford seconded and the motion carried by voice vote.

Mark Hermodson moved to table the discussion, and not send the proposal to the Area Plan Commission, until the Ordinance Committee reviews another draft. Karl Rutherford seconded and the motion carried by voice vote.

Jan Mills asked if the Committee would like to discuss Joseph Bumbleburg's suggestions on the 15-day appeal process.

KD Benson replied that she would like the Commissioners to work with Al Levy on that issue.

Mark Hermodson stated that the big concern was to get a legal opinion on that issue.

James Hawley stated that should be discussed with APC legal counsel.

Jan Mills stated that there is now a list of topics for the Ordinance Committee to discuss, and members and staff are free to add to it.

James Hawley stated that there are still pieces and parts of the ordinance that do not fit. He informed the Committee that a comprehensive rewrite of the Subdivision Ordinance is desperately needed. He mentioned other topics that are currently on hold or in progress such as, Digital Submission Standards and the RE roads. He said that some rewriting of the ordinance should be done in order to be compatible with the City of Lafayette's ordinance on Historic structures demolition.

Jan Mills asked what order these topics would be presented to the Committee.

James Hawley responded that the topics had not been prioritize yet. He said that some topics are relying on other factors, such as Commissioners and jurisdictions signing off on them before they are ready to be heard by the Ordinance Committee.

Karl Rutherford asked when the US 231 final decision would be revealed.

James Hawley stated that a final community advisory meeting is scheduled for January 30, 2003 at 5:30 at Klondike Middle School. He said that there might not be a decisive answer at that time due to the Archeological Report and the Federal Highway Report. He mentioned that a final approval should be made before the end of the consultant's contract, which is March 12, 2003. He stated that there is a public meeting scheduled for the other US231 project at the County Building at 6:30 on January 28, 2003. He said this project involves the I-65 to I-70 proposal for 231. He mentioned that the US 52 to SR 26 project is the little gap in-between the two other State projects and that meeting is at the County Building at 6:00pm on January 28, 2003. He said that even though this project does not have a complete environmental study, it is to propose projects of independent utility.

Jan Mills asked if the Committee needed to act on the Wabash Township study in anticipation of the March date.

James Hawley replied that it was close enough that they could move forward.

Sallie Fahey informed the Committee that due to time restraints on staff, they would present possible solutions in an unspecified manner, as things are done.

James Hawley stated that due to excessive current planning issues, it takes staff away from neighborhood plans and studies.

II. CITIZEN COMMENTS

None

III. ADJOURNMENT

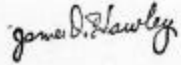
Mark Hermodson moved to adjourn. Karl Rutherford seconded and the motion passed by voice vote.

Respectfully submitted,



Michelle D'Andrea
Recording Secretary

Reviewed by,



James D. Hawley, AICP
Executive Director